

**Introduced by Committee on Banking, Finance and Insurance  
(Senators Speier (Chair), Cox, Denham, Figueroa,  
Hollingsworth, Maldonado, Murray, Ortiz, and Scott)**

March 1, 2005

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An act to repeal Section 1748.12 of the Civil Code, to amend Section 1985.4 of the Code of Civil Procedure, to add Sections 4058.1, 4058.2, and 4058.3 to the Financial Code, and to amend Section 19271.6 of the Revenue and Taxation Code, relating to financial privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1104, as introduced, Committee on Banking, Finance and Insurance. Financial privacy.

(1) Existing law, the California Financial Information Privacy Act, regulates the sale, sharing, transfer, or disclosure by a financial institution of nonpublic personal information, as defined.

This bill would exclude specified entities from the act, including a provider of health care, a health care service plan, and a state agency. The bill would provide that the act supplements and does not limit the application of various other provisions, including the Consumer Credit Reporting Agencies Act. The bill would establish a policy in the event that the act conflicts with another statute enacted before the act was enacted.

(2) Existing law, the Song-Beverly Credit Card Act of 1971, requires a credit card issuer to provide specified information to a cardholder if the credit card issuer discloses marketing information to any person.

This bill would delete that requirement.

(3) Existing law provides for issuance of a subpoena duces tecum for the production of various kinds of defined personal records

pertaining to a consumer, including records containing “personal information,” as defined.

This bill would also make subject to subpoena records containing nonpublic personal information otherwise protected from disclosure under the California Financial Information Privacy Act.

(4) Existing law requires the Franchise Tax Board to collect child support delinquencies, as defined. Under existing law, the Franchise Tax Board, through an agreement with the Department of Child Support Services and in coordination with financial institutions, operates a Financial Institution Match System utilizing automated data exchanges that is not subject to the limitations in the California Right To Financial Privacy Act.

This bill would also exempt the Financial Institution Match System from the limitations in the California Financial Information Privacy Act.

(5) The bill would require the California Law Revision Commission to study the law governing sharing and disclosure of a consumer’s nonpublic personal information by a financial institution, and to make recommendations to the Governor and Legislature for specified purposes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1748.12 of the Civil Code is  
2 repealed.~~1748.12. (a) For purposes of this section:~~  
3 ~~(1) “Cardholder” means any consumer to whom a credit card~~  
4 ~~is issued, provided that, when more than one credit card has been~~  
5 ~~issued for the same account, all persons holding those credit~~  
6 ~~cards may be treated as a single cardholder.~~  
7 ~~(2) “Credit card” means any card, plate, coupon book, or other~~  
8 ~~single credit device existing for the purpose of being used from~~  
9 ~~time to time upon presentation to obtain money, property, labor,~~  
10 ~~or services on credit. “Credit card” does not mean any of the~~  
11 ~~following:~~  
12 ~~(A) Any single credit device used to obtain telephone~~  
13 ~~property, labor, or services in any transaction under public utility~~  
14 ~~tariffs.~~

1 ~~(B) Any device that may be used to obtain credit pursuant to~~  
2 ~~an electronic fund transfer but only if the credit is obtained under~~  
3 ~~an agreement between a consumer and a financial institution to~~  
4 ~~extend credit when the consumer's asset account is overdrawn or~~  
5 ~~to maintain a specified minimum balance in the consumer's asset~~  
6 ~~account.~~

7 ~~(C) Any key or card key used at an automated dispensing~~  
8 ~~outlet to obtain or purchase petroleum products, as defined in~~  
9 ~~subdivision (c) of Section 13401 of the Business and Professions~~  
10 ~~Code, which will be used primarily for business rather than~~  
11 ~~personal or family purposes.~~

12 ~~(3) "Marketing information" means the categorization of~~  
13 ~~cardholders compiled by a credit card issuer, based on a~~  
14 ~~cardholder's shopping patterns, spending history, or behavioral~~  
15 ~~characteristics derived from account activity which is provided to~~  
16 ~~a marketer of goods or services or a subsidiary or affiliate~~  
17 ~~organization of the company that collects the information for~~  
18 ~~consideration. "Marketing information" does not include~~  
19 ~~aggregate data that does not identify a cardholder based on the~~  
20 ~~cardholder's shopping patterns, spending history, or behavioral~~  
21 ~~characteristics derived from account activity or any~~  
22 ~~communications to any person in connection with any transfer,~~  
23 ~~processing, billing, collection, chargeback, fraud prevention,~~  
24 ~~credit card recovery, or acquisition of or for credit card accounts.~~

25 ~~(b) If the credit card issuer discloses marketing information~~  
26 ~~concerning a cardholder to any person, the credit card issuer shall~~  
27 ~~provide a written notice to the cardholder that clearly and~~  
28 ~~conspicuously describes the cardholder's right to prohibit the~~  
29 ~~disclosure of marketing information concerning the cardholder~~  
30 ~~which discloses the cardholder's identity. The notice shall be in~~  
31 ~~10-point type and shall advise the cardholder of his or her ability~~  
32 ~~to respond either by completing a preprinted form or a toll-free~~  
33 ~~telephone number that the cardholder may call to exercise this~~  
34 ~~right.~~

35 ~~(e) The requirements of subdivision (b) shall be satisfied by~~  
36 ~~furnishing the notice to the cardholder:~~

37 ~~(1) At least 60 days prior to the initial disclosure of marketing~~  
38 ~~information concerning the cardholder by the credit card issuer.~~

~~(2) For all new credit cards issued on or after April 1, 2002, on the form containing the new credit card when the credit card is delivered to the cardholder.~~

~~(3) At least once per calendar year, to every cardholder entitled to receive an annual statement of billings rights pursuant to 12 C.F.R. 226.9 (Regulation Z). The notice required by this paragraph may be included on or with any periodic statement or with the delivery of the renewal card.~~

~~(d) (1) The cardholder's election to prohibit disclosure of marketing information shall be effective only with respect to marketing information that is disclosed to any party beginning 30 days after the credit card issuer has received, at the designated address on the form containing the new credit card or on the preprinted form, or by telephone, the cardholder's election to prohibit disclosure. This does not apply to the disclosure of marketing information prior to the cardholder's notification to the credit card issuer of the cardholder's election.~~

~~(2) An election to prohibit disclosure of marketing information shall terminate upon receipt by the credit card issuer of notice from the cardholder that the cardholder's election to prohibit disclosure is no longer effective.~~

~~(e) The requirements of this section do not apply to any of the following communications of marketing information by a credit card issuer:~~

~~(1) Communications to any party to, or merchant specified in, the credit card agreement, or to any person whose name appears on the credit card or on whose behalf the credit card is issued.~~

~~(2) Communications to consumer credit reporting agencies, as defined in subdivision (d) of Section 1785.3.~~

~~(3) To the extent that the Fair Credit Reporting Act preempts the requirements of this section as to communication by a credit card issuer to a corporate subsidiary or affiliate, the credit card issuer may communicate information about a cardholder to a corporate subsidiary or affiliate to the extent and in the manner permitted under that act.~~

~~(4) Communications to a third party when the third party is responsible for conveying information from the card issuer to any of its cardholders.~~

~~(f) If the laws of the United States require disclosure to cardholders regarding the use of personal information,~~

1 ~~compliance with the federal requirements shall be deemed to be~~  
2 ~~compliance with this section.~~

3 ~~(g) This section shall become operative on April 1, 2002.~~

4 SEC. 2. Section 1985.4 of the Code of Civil Procedure is  
5 amended to read:

6 1985.4. The procedures set forth in Section 1985.3 are  
7 applicable to a subpoena duces tecum for records containing  
8 ~~“personal”~~ *the following*:

9 (a) “Personal information,” as defined in Section 1798.3 of  
10 the Civil Code ~~which are~~ *that is* otherwise exempt from public  
11 disclosure under Section 6254 of the Government Code ~~which~~  
12 ~~are~~ *that is* maintained by a state or local agency as defined in  
13 Section 6252 of the Government Code. For the purposes of ~~this~~  
14 ~~section~~ *application of Section 1985.3 to this subdivision*,  
15 “witness” means a state or local agency as defined in Section  
16 6252 of the Government Code and “consumer” means any  
17 employee of any state or local agency as defined in Section 6252  
18 of the Government Code, or any other natural person. Nothing in  
19 ~~this section subdivision~~ shall pertain to personnel records as  
20 defined in Section 832.8 of the Penal Code.

21 (b) *Nonpublic personal information otherwise protected from*  
22 *disclosure under the California Financial Information Privacy*  
23 *Act (Division 1.2 (commencing with Section 4050) of the*  
24 *Financial Code). A consumer’s exercise or nonexercise of rights*  
25 *under the California Financial Information Privacy Act does not*  
26 *affect the grounds for a motion to quash, modify, or condition a*  
27 *subpoena duces tecum, or for a written objection to production of*  
28 *personal records, under Section 1985.3 as an undue invasion of*  
29 *the right to privacy.*

30 SEC. 3. Section 4058.1 is added to the Financial Code, to  
31 read:

32 4058.1. This division does not apply to and the term  
33 “financial institution” does not include any of the following:

34 (a) A provider of health care, health care service plan, or  
35 contractor, within the meaning of the Confidentiality of Medical  
36 Information Act (Part 2.6 (commencing with Section 56) of  
37 Division 1 of the Civil Code), with respect to medical  
38 information covered by that act.

(b) An agency of the state. As used in this subdivision, “agency of the state” includes an officer, employee, or other agent of the state acting in that capacity.

SEC. 4. Section 4058.2 is added to the Financial Code, to read:

4058.2. This division supplements and does not limit the application of any of the following provisions:

(a) A statute protecting the confidentiality of records or other information concerning a client of the practitioner of a licensed or otherwise regulated profession or vocation.

(b) A statute imposing a criminal penalty for disclosure of records or other information concerning a consumer without the consent of the consumer.

(c) The Consumer Credit Reporting Agencies Act (Title 1.6 (commencing with Section 1785.1) of Part 4 of Division 3 of the Civil Code).

(d) The Investigative Consumer Reporting Agencies Act (Title 1.6A (commencing with Section 1786) of Part 4 of Division 3 of the Civil Code).

(e) The Rosenthal Fair Debt Collection Practices Act (Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code).

(f) Title 1.81.1 (commencing with Section 1798.85) of Part 4 of Division 3 of the Civil Code, relating to confidentiality of social security numbers.

(g) Title 1.82 (commencing with Section 1799) of Part 4 of Division 3 of the Civil Code, relating to confidentiality of business records.

(h) The California Right to Financial Privacy Act (Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code).

SEC. 5. Section 4058.3 is added to the Financial Code, to read:

4058.3. (a) If this division conflicts with another statute that limits or prohibits disclosure by a financial institution of nonpublic personal information of a consumer, public policy generally favors application of the statute that provides greater protection from disclosure of the consumer’s nonpublic personal information.

(b) This section applies only to a statute enacted before enactment of this division.

SEC. 6. Section 19271.6 of the Revenue and Taxation Code is amended to read:

19271.6. (a) The Franchise Tax Board, through a cooperative agreement with the Department of Child Support Services, and in coordination with financial institutions doing business in this state, shall operate a Financial Institution Match System utilizing automated data exchanges to the maximum extent feasible. The Financial Institution Match System shall be implemented pursuant to guidelines prescribed by the Department of Child Support Services and the Franchise Tax Board. These guidelines shall include a structure by which financial institutions, or their designated data-processing agents, shall receive from the Franchise Tax Board the file or files of past-due support obligors compiled in accordance with subdivision (c), that the institution shall match with its own list of accountholders to identify past-due support obligor accountholders at the institution. To the extent allowed by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the guidelines shall include an option by which financial institutions without the technical ability to process the data exchange, or without the ability to employ a third-party data processor to process the data exchange, may forward to the Franchise Tax Board a list of all accountholders and their social security numbers, so that the Franchise Tax Board shall match that list with the file or files of past-due support obligors compiled in accordance with subdivision (c).

(b) The Financial Institution Match System shall not be subject to any limitation set forth in ~~Chapter~~ *the following statutes:*

(1) *The California Right to Financial Privacy Act (Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code Code). However, any use*

(2) *The California Financial Information Privacy Act (Division 12 (commencing with Section 4050) of the Financial Code).*

Use of the information provided pursuant to this section for any purpose other than the enforcement and collection of a child

1 support delinquency, as set forth in Section 19271, shall be a  
2 violation of Section 19542.

3 (c) (1) Each county shall compile a file of support obligors  
4 with judgments and orders that are being enforced by local child  
5 support agencies pursuant to Section 17400 of the Family Code,  
6 and who are past due in the payment of their support obligations.  
7 The file shall be compiled, updated, and forwarded to the  
8 Franchise Tax Board, in accordance with the guidelines  
9 prescribed by the Department of Child Support Services and the  
10 Franchise Tax Board.

11 (2) The Department of Child Support Services, shall compile a  
12 file of obligors with support arrearages from requests made by  
13 other states for administrative enforcement in interstate cases, in  
14 accordance with federal requirements (42 U.S.C. Sec.  
15 666(a)(14)). This file shall be compiled and forwarded to the  
16 Franchise Tax Board in accordance with the guidelines  
17 prescribed by the Department of Child Support Services and the  
18 Franchise Tax Board. The file shall include, to the extent  
19 possible, the obligor's address.

20 (d) To effectuate the Financial Institution Match System,  
21 financial institutions subject to this section shall do all of the  
22 following:

23 (1) Provide to the Franchise Tax Board on a quarterly basis the  
24 name, record address and other addresses, social security number  
25 or other taxpayer identification number, and other identifying  
26 information for each noncustodial parent who maintains an  
27 account at the institution and who owes past-due support, as  
28 identified by the Franchise Tax Board by name and social  
29 security number or other taxpayer identification number.

30 (2) Except as provided in subdivision (j), in response to a  
31 notice or order to withhold issued by the Franchise Tax Board,  
32 withhold from any accounts of the obligor the amount of any  
33 past-due support stated on the notice or order and transmit the  
34 amount to the Franchise Tax Board in accordance with Section  
35 18670 or 18670.5.

36 (e) Unless otherwise required by applicable law, a financial  
37 institution furnishing a report or providing information to the  
38 Franchise Tax Board pursuant to this section shall not disclose to  
39 a depositor or an accountholder, or a codepositor or  
40 coaccountholder, that the name, address, social security number,



1 or other taxpayer identification number or other identifying  
2 information of that person has been received from or furnished to  
3 the Franchise Tax Board.

4 (f) A financial institution shall incur no obligation or liability  
5 to any person arising from any of the following:

6 (1) Furnishing information to the Franchise Tax Board as  
7 required by this section.

8 (2) Failing to disclose to a depositor or accountholder that the  
9 name, address, social security number, or other taxpayer  
10 identification number or other identifying information of that  
11 person was included in the data exchange with the Franchise Tax  
12 Board required by this section.

13 (3) Withholding or transmitting any assets in response to a  
14 notice or order to withhold issued by the Franchise Tax Board as  
15 a result of the data exchange. This paragraph shall not preclude  
16 any liability that may result if the financial institution does not  
17 comply with subdivision (b) of Section 18674.

18 (4) Any other action taken in good faith to comply with the  
19 requirements of this section.

20 (g) Information required to be submitted to the Franchise Tax  
21 Board pursuant to this section shall only be used by the Franchise  
22 Tax Board to collect past-due support pursuant to Section 19271.  
23 If the Franchise Tax Board has issued an earnings withholding  
24 order and the condition described in subparagraph (C) of  
25 paragraph (1) of subdivision (i) exists with respect to the obligor,  
26 the Franchise Tax Board shall not use the information it receives  
27 under this section to collect the past-due support from that  
28 obligor.

29 (1) With respect to files compiled under paragraph (1) of  
30 subdivision (c), the Franchise Tax Board shall forward to the  
31 counties, in accordance with guidelines prescribed by the  
32 Department of Child Support Services and the Franchise Tax  
33 Board, information obtained from the financial institutions  
34 pursuant to this section. No county shall use this information for  
35 directly levying on any account. Each county shall keep the  
36 information confidential as provided by Section 17212 of the  
37 Family Code.

38 (2) With respect to files compiled under paragraph (2) of  
39 subdivision (c), the amount collected by the Franchise Tax Board

1 shall be deposited and distributed to the referring state in  
2 accordance with Section 19272.

3 (h) For those noncustodial parents owing past-due support for  
4 which there is a match under paragraph (1) of subdivision (d), the  
5 amount past due as indicated on the file or files compiled  
6 pursuant to subdivision (c) at the time of the match shall be a  
7 delinquency under this article for the purposes of the Franchise  
8 Tax Board taking any collection action pursuant to Section 18670  
9 or 18670.5.

10 (i) A child support delinquency need not be referred to the  
11 Franchise Tax Board for collection if a jurisdiction outside this  
12 state is enforcing the support order.

13 (j) (1) Each county shall notify the Franchise Tax Board upon  
14 the occurrence of the circumstances described in the following  
15 subparagraphs with respect to an obligor of past-due support:

16 (A) A court has ordered an obligor to make scheduled  
17 payments on a child support arrearages obligation and the obligor  
18 is in compliance with that order.

19 (B) An earnings assignment order or an order/notice to  
20 withhold income that includes an amount for past-due support  
21 has been served on the obligated parent's employer and earnings  
22 are being withheld pursuant to the earnings assignment order or  
23 an order/notice to withhold income.

24 (C) At least 50 percent of the obligated parent's earnings are  
25 being withheld for support.

26 (2) Notwithstanding Section 704.070 of the Code of Civil  
27 Procedure, if any of the conditions set forth in paragraph (1)  
28 exist, the assets of an obligor held by a financial institution are  
29 subject to levy as provided by paragraph (2) of subdivision (d).  
30 However, the first three thousand five hundred dollars (\$3,500)  
31 of an obligor's assets are exempt from collection under this  
32 subdivision without the obligor having to file a claim of  
33 exemption.

34 (3) If any of the conditions set forth in paragraph (1) exist, an  
35 obligor may apply for a claim of exemption pursuant to Article 2  
36 (commencing with Section 703.510) of Chapter 4 of Division 2  
37 of Title 9 of Part 2 of the Code of Civil Procedure for an amount  
38 that is less than or equal to the total amount levied. The sole basis  
39 for a claim of exemption under this subdivision shall be the  
40 financial hardship for the obligor and the obligor's dependents.

1 (4) For the purposes of a claim of exemption made pursuant to  
2 paragraph (3), Section 688.030 of the Code of Civil Procedure  
3 shall not apply.

4 (5) For claims of exemption made pursuant to paragraph (3),  
5 the local child support agency responsible for enforcement of the  
6 obligor's child support order shall be the levying officer for the  
7 purpose of compliance with the provisions set forth in Article 2  
8 (commencing with Section 703.510) of Chapter 4 of Division 2  
9 of Title 9 of Part 2 of the Code of Civil Procedure except for the  
10 release of property required by subdivision (e) of Section  
11 703.580 of the Code of Civil Procedure.

12 (6) The local child support agency shall notify the Franchise  
13 Tax Board within two business days of the receipt of a claim of  
14 exemption from an obligor. The Franchise Tax Board shall direct  
15 the financial institution subject to the order to withhold to hold  
16 any funds subject to the order pending notification by the  
17 Franchise Tax Board to remit or release the amounts held.

18 (7) The superior court in the county in which the local child  
19 support agency enforcing the support obligation is located shall  
20 have jurisdiction to determine the amount of exemption to be  
21 allowed. The court shall consider the needs of the obligor, the  
22 obligee, and all persons the obligor is required to support, and all  
23 other relevant circumstances in determining whether to allow any  
24 exemption pursuant to this subdivision. The court shall give  
25 effect to its determination by an order specifying the extent to  
26 which the amount levied is exempt.

27 (8) Within two business days of receipt of an endorsed copy of  
28 a court order issued pursuant to subdivision (e) of Section  
29 703.580 of the Code of Civil Procedure, the local child support  
30 agency shall provide the Franchise Tax Board with a copy of the  
31 order. The Franchise Tax Board shall instruct the financial  
32 institution to remit or release the obligor's funds in accordance  
33 with the court's order.

34 (k) For purposes of this section:

35 (1) "Account" means any demand deposit account, share or  
36 share draft account, checking or negotiable withdrawal order  
37 account, savings account, time deposit account, or a money  
38 market mutual fund account, whether or not the account bears  
39 interest.

1 (2) “Financial institution” has the same meaning as defined in  
2 Section 669A(d)(1) of Title 42 of the United States Code.

3 (3) “Past-due support” means any child support obligation that  
4 is unpaid on the due date for payment.

5 (f) Out of any money received from the federal government for  
6 the purpose of reimbursing financial institutions for their actual  
7 and reasonable costs incurred in complying with this section, the  
8 state shall reimburse those institutions. To the extent that money  
9 is not provided by the federal government for that purpose, the  
10 state shall not reimburse financial institutions for their costs in  
11 complying with this section.

12 SEC. 7. (a) The California Law Revision Commission shall  
13 study the law governing sharing and disclosure of a consumer’s  
14 nonpublic personal information by a financial institution and  
15 shall from time to time make recommendations to the Governor  
16 and the Legislature for any revisions of California law necessary  
17 for any of the following purposes:

18 (1) The proper implementation and operation of the California  
19 Financial Information Privacy Act (Division 1.2 (commencing  
20 with Section 4050) of the Financial Code).

21 (2) To adjust California statutes to the extent necessary to  
22 recognize any federal preemption, and any further revisions  
23 necessary to balance the rights and interests of interested persons  
24 adversely affected by federal preemption.

25 (3) To coordinate California statutes with each other.

26 (b) The commission shall commence the study authorized by  
27 this section on or after January 1, 2007, or such other time that  
28 litigation over the extent of federal preemption has been  
29 adequately resolved.

30 (c) This section applies to the extent the commission has  
31 funding and staffing adequate to accomplish the purposes of the  
32 section without unduly impairing other projects of the  
33 commission.